

EXHIBIT 5

1 STEWART

2 I didn't ask you if have they have
3 similarities, I asked you if they are
4 the same structurally?

5 MR. FRANK: Objection. Asked
6 and answered.

7 Go ahead.

8 Q Are the structures of the
9 deposit copy of Let's Get It On and
10 Thinking Out Loud the same?

11 A They have important
12 similarities and they have important
13 differences.

14 Q What key is the deposit copy
15 of Let's Get It On in?

16 A E-flat.

17 Q And what key is the recorded
18 version of Let's Get It On in?

19 A E-flat.

20 Q And your transcriptions are
21 the key of D major, correct?

22 A D major?

23 Q Yeah.

24 A Yeah because I transposed
25 them to the same key for comparison

1 STEWART

2 purposes which is standard
3 musicological procedure.

4 Q And what is the basic chord
5 progression in Let's Get It On deposit
6 copy?

7 A For the verses and choruses
8 it is in the key of E-flat. Should I
9 give it to you or in the key of D or
10 using Roman numerals?

11 Q No, Roman numerals.

12 A One with the capital I
13 meaning major, three with three small
14 Is meaning minor, and then IV major, V
15 major. So I, III, IV, V.

16 Q And would I be correct that
17 the V is a V major VII?

18 A No, it's not.

19 Q So it's your testimony that
20 the deposit copy, the last chord in the
21 chord progression is not a V major VII?

22 A It would be my testimony,
23 yes.

24 Q Would you agree that the
25 basic chord progression in the Let's

1 STEWART

2 passion. I mean, I've done so many
3 rock gigs that I can't even begin to
4 count them.

5 Q When you were comparing the
6 two songs, did you undertake any effort
7 to exclude elements that are not
8 original to Let's Get It On when
9 comparing the two songs?

10 A I think we covered that.

11 Yeah, I didn't consider that
12 these first three things we were
13 talking about in my report; tempo, key,
14 length, other performance elements,
15 certain improvisational elements, so
16 forth.

17 Q Do you believe that the two
18 songs as whole works are identical?

19 A No.

20 Q Do you believe that they're
21 virtually identical?

22 A No. The entire songs -- the
23 songs in their entirety as entire
24 works, no. The answer is no, which was
25 what your question was.